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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

MARCIA WELLS and TEENA ACREE,  
8 individually and as Co-Special Administrators  
of the Estate of Byron Lee Williams, Deceased;  
9 TINA LEWIS-STEVENSON, individually as an  
heir; GWENDOLYN LEWIS, individually as  
10 an heir; ROBYN WILLIAMS, individually as  
an heir and DEWAIN LEWIS, individually as  
11 an heir.

#### **Plaintiffs.**

13 |

14 THE CITY OF LAS VEGAS, a political  
15 subdivision of the State of Nevada; CLARK  
16 COUNTY, a political subdivision of the State of  
17 Nevada; LAS VEGAS METROPOLITAN  
18 POLICE DEPARTMENT, a political  
19 subdivision of the State of Nevada; OFFICER  
20 PATRICK CAMPBELL, individually and as an  
21 agent of the City of Las Vegas, Clark County,  
22 and the Las Vegas Metropolitan Police  
23 Department; OFFICER BENJAMIN  
24 VASQUEZ, individually and as an agent of the  
25 City of Las Vegas, Clark County, and the Las  
Vegas Metropolitan Police Department;  
OFFICER ALEXANDER GONZALEZ,  
individually and as an agent of the City of Las  
Vegas, Clark County, and the Las Vegas  
Metropolitan Police Department; OFFICER  
ROCKY ROMAN, individually and as an agent  
of the City of Las Vegas, Clark County, and the  
Las Vegas Metropolitan Police Department; and  
SHERIFF JOE LOMBARDO, as agent of the  
City of Las Vegas, Clark County, and the Las  
Vegas Metropolitan Police Department,

## Defendants.

Case Number:  
2:21-cv-01346-JCM-EJY

**DEFENDANTS LVMPD, CAMPBELL,  
VASQUEZ, GONZALEZ, ROMAN  
AND LOMBARDO'S MOTION FOR  
PARTIAL DISMISSAL**

1 Defendants Las Vegas Metropolitan Police Department, Officer Patrick Campbell,  
 2 Officer Benjamin Vasquez, Officer Alexander Gonzalez, Officer Rocky Roman and Sheriff  
 3 Joe Lombardo (“LVMPD Defendants”), by and through their attorneys of record, Marquis  
 4 Aurbach Coffing, hereby file this Motion for Partial Dismissal.

5 **MEMORANDUM OF POINTS & AUTHORITIES**

6 **I. INTRODUCTION**

7 This is a 42 U.S.C. § 1983 excessive force lawsuit. According to plaintiffs, on  
 8 September 5, 2019, the LVMPD Defendants caused Byron Lee Williams’s (“Decedent”)  
 9 death while taking him into custody.

10 On July 14, 2021, plaintiffs filed their Complaint alleging (1) state law  
 11 battery/wrongful death (First Cause of Action), (2) state law negligence/wrongful death  
 12 (Second Cause of Action), (3) state law negligence/survival action (Third Cause of Action),  
 13 (4) state law battery/survival action (Fourth Cause of Action), (5) § 1983 excessive force  
 14 (Fifth Cause of Action), (6) § 1983 denial of medical needs (Sixth Cause of Action), (7) a  
 15 *Monell*<sup>1</sup> claim for unconstitutional policies and practices (Seventh Cause of Action), (8) a  
 16 *Monell* claim for ratification (Eighth Cause of Action), (9) state law negligent retention  
 17 (Ninth Cause of Action), and (10) state law negligent training claim (Tenth Cause of  
 18 Action). This Motion asks this Court to take the following action:

19 1. Dismiss all of the individual plaintiffs from the federal law claims (causes of  
 20 action five, six, seven, and eight) because only the Decedent’s Estate has standing to pursue  
 21 those claims;

22 2. Dismiss all of the individual plaintiffs from the state law survival action as  
 23 only the Decedent’s Estate has standing to pursue the claim;

24 3. Dismiss plaintiffs Marcia Wells and Teena Acree in their individual  
 25 capacities from the lawsuit because they lack standing to pursue any claims;

26  
 27 <sup>1</sup> *Monell v. Dept of Soc. Svcs.*, 436 U.S. 658 (1978).

1           4. Dismiss Sheriff Lombardo from the lawsuit because the claims against him  
 2 are duplicative of the claims against LVMPD, and there is no allegation he had any  
 3 individual involvement; and

4           5. Dismiss plaintiffs' state law negligent retention and training claims because  
 5 the LVMPD Defendants are immune from both claims pursuant to NRS 41.032.

6 **II. FACTS**

7           **A. THE PARTIES.**

8 Plaintiffs' Complaint names five plaintiffs. The plaintiffs can be separated into three  
 9 groups: (1) the Estate; (2) the Nieces; and (3) the Siblings.

10 Plaintiffs Marcia Wells ("Wells") and Teena Acree ("Acree") are acting "as the Co-  
 11 Special Administrators for the Estate of Byron Lee Williams" (the "Estate") and are also  
 12 suing in their individual capacities as the Decedent's nieces (collectively "the Nieces").  
 13 ECF No. 1 at ¶¶23-25. Plaintiffs Tina Lewis-Stevenson ("Lewis-Stevenson"), Gwendolyn  
 14 Lewis ("Lewis"), Robyn Williams, and Dewain Lewis ("Lewis") are alleged to be the  
 15 Decedent's siblings (collectively "the Siblings") and are suing in their individual capacities.  
 16 *Id.* at ¶¶26-29.

17 Defendant LVMPD is a municipality in Clark County, Nevada. It is responsible for  
 18 the training and supervision of all LVMPD officers. *See* NRS 280.10; NRS 280.280.  
 19 Defendants Campbell, Vasquez, Gonzalez, and Roman are police officers employed by  
 20 LVMPD. *Id.* at ¶¶13-17. Sheriff Lombardo is LVMPD's current sheriff. *Id.* Defendants  
 21 The City of Las Vegas and Clark County are governmental entities that are not affiliated  
 22 with LVMPD or its officers.<sup>2</sup>

23           **B. PLAINTIFFS' FACTS.**

24 On September 5, 2019, the Decedent was illegally riding a bicycle without a  
 25 headlight. ECF No. 1 at ¶¶62 and 71. Defendants Campbell and Vazquez attempted to stop  
 26

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27 <sup>2</sup> This Motion takes no position on the claims against The City of Las Vegas or Clark County.

1 the Decedent to investigate. *Id.* at 71. The Decedent chose to ignore the officers' lawful  
 2 commands and fled on foot. *Id.* at ¶75. After a two-minute foot pursuit, the Decedent  
 3 dropped to his stomach and surrendered. *Id.* at ¶¶90-92. The officers then struggled with  
 4 the Decedent to effectuate handcuffing. *Id.* at ¶¶96-108. Once handcuffing was completed,  
 5 plaintiffs allege that the officers kept the Decedent in a prone position and did not render  
 6 medical aid. *Id.* at ¶¶108-135. Plaintiff eventually passed away. *Id.* at ¶161.

### 7 III. **LEGAL STANDARD.**

8 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal  
 9 sufficiency of the claims asserted in the complaint. The issue on a motion to dismiss for  
 10 failure to state a claim is not whether the claimant will ultimately prevail, but whether the  
 11 claimant is entitled to offer evidence to support the claims asserted. *Gilligan v. Jamco Dev.*  
 12 *Corp.*, 108 F.3d 246, 249 (9th Cir. 1997). When evaluating a Rule 12(b)(6) motion, the  
 13 district court must accept all material allegations in the complaint as true and construe them  
 14 in the light most favorable to the non-moving party. *Moyo v. Gomez*, 32 F.3d 1382, 1384  
 15 (9th Cir. 1994). If a plaintiff will not be entitled to relief under any set of facts that could be  
 16 proven under the allegations of the complaint, the court may *sua sponte* dismiss the cause of  
 17 action or portions thereof. *Halt v. Wend Inv. Co.*, 672 F.2d 1305, 1309 (9th Cir. 1982).

### 18 IV. **LEGAL ARGUMENT**

19 The LVMPD Defendants request that this Court (1) dismiss all of the plaintiffs  
 20 except the Estate from the federal law claims; (2) dismiss all of the individual capacity  
 21 claims brought by the Nieces; (3) dismiss Sheriff Lombardo, and (4) dismiss plaintiffs' state  
 22 law claims for negligent retention and negligent training.

#### 23       A.     **ONLY THE ESTATE HAS STANDING TO PURSUE THE FEDERAL** 24       **LAW § 1983 CLAIMS.**

25 Plaintiffs' federal law causes of action are brought pursuant to 42 U.S.C. § 1983.  
 26 Specifically, plaintiffs allege: (1) excessive force in violation of the Fourth Amendment  
 27 (Fifth Cause of Action); (2) disregard of medical needs (Sixth Cause of Action); (3) a

1 *Monell* claim against LVMPD (Seventh Cause of Action); and (4) ratification against  
 2 LVMPD (Eighth Cause of Action). According to the Complaint, all of the plaintiffs are  
 3 pursuing these claims. However, only the Decedent's Estate has standing to pursue these  
 4 claims.

5 Under § 1983, claims of excessive force and denial of medical care against police  
 6 officers must be brought under the Fourth Amendment. *See Graham v. Connor*, 490 U.S.  
 7 386, 394 (1989) (excessive force); *Tatum v. City & Cty. of San Francisco*, 441 F.3d 1090,  
 8 1098-99 (2006) (medical needs). The *Monell* claims against LVMPD are derivative of  
 9 plaintiffs' Fourth Amendment claims. *Lockett v. Cnty. of Los Angeles*, 977 F.3d 737, 740  
 10 (9th Cir. 2020) (citing *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986)).

11 "Fourth Amendment rights are personal rights which . . . may not be vicariously  
 12 asserted." *Alderman v. United States*, 394 U.S. 165, 174, 89 S.Ct. 961 (1969). However,  
 13 the Ninth Circuit has held that in § 1983 actions, the survivors of an individual killed as a  
 14 result of a police officer's excessive use of force may assert a claim on the individual's  
 15 behalf if the relevant state's law authorizes a survival action. 42 U.S.C. § 1988(A); *Smith v.*  
 16 *City of Fontana*, 818 F.2d 1411, 1417 (9th Cir. 1987). The parties seeking to bring a  
 17 survival action bear the burden of demonstrating that a particular state's law authorizes the  
 18 survival action and that the plaintiff meets the state's requirements for bringing a survival  
 19 action. *Byrd v. Guess*, 137 F. 3d 1126, 1131 (9th Cir. 1998) (ruling that failure to  
 20 demonstrate Fourth Amendment standing precludes claim regardless of its potential merits).

21 Nevada law provides for the survival of a cause of action for injuries suffered by an  
 22 individual who dies before judgment is rendered. NRS 41.100(3). However,  
 23 NRS 41.100(3) extends the right to bring a survival action only to the official representatives  
 24 of an individual's estate; no mention is made of a similar right extending to the family  
 25 members or heirs to bring a survival action independent or in lieu of the estate's claim.  
 26 Moreover, in the same NRS Chapter, the Nevada legislature signaled its recognition of the  
 27 distinction between an estate representative and a decedent's heirs by granting both heirs

1 and estate representatives the right to bring a state law wrongful death cause of action. *See*  
 2 NRS 41.085. The Nevada Legislature's decision to mention only estate representatives in  
 3 NRS 41.100(3) clearly indicates that a right to bring a survival action in Nevada is limited to  
 4 the duly appointed representatives of a deceased's estate. *See e.g. Moreland v. Las Vegas*  
 5 *Metropolitan Police Department*, 159 F.3d 365 (1998).

6 In *Moreland*, the decedent's mother and minor children sued the police department  
 7 and two officers asserting claims under § 1983 and state law wrongful death and tort claims.  
 8 The court ruled that the mother and children lacked standing to assert a § 1983 survival  
 9 action because Nevada law required survival actions to be brought by "official  
 10 representatives of decedent's estate" and neither the mother nor the children alleged to bring  
 11 their claims in a representative capacity. *Id.* 159 F.3d at 369. Therefore, the court dismissed  
 12 their claims.

13 Here, the Nieces' and Siblings' claims are similar to *Moreland*. The individual  
 14 plaintiffs do not allege that their personal rights were infringed upon. Accordingly, all of the  
 15 plaintiffs, in their individual capacities, lack standing to bring the § 1983 claims or the  
 16 *Monell* claims. Therefore, the LVMPD Defendants request an order dismissing all the  
 17 plaintiffs except the Estate from the federal law claims.

18 **B. THE STATE LAW CLAIMS.**

19 According to the Complaint, all of the plaintiffs are pursuing state law claims for  
 20 (1) battery-wrongful death (First Cause of Action), (2) negligence-wrongful death (Second  
 21 Cause of Action), (3) negligence-survival action (Third Cause of Action), (4) battery-  
 22 survival (Fourth Cause of Action), (5) negligent retention (Ninth Cause of Action), and  
 23 (6) negligent training (Tenth Cause of Action). Thus, the plaintiffs believe that, under  
 24 Nevada law, they can all pursue a survival action and a wrongful death action. In actuality,  
 25 only the Estate can pursue the survival action and only the Estate and Siblings can bring a  
 26 wrongful death claim.

1           **1. Nevada state law regarding survival actions and wrongful death  
actions.**

2           The distinction between a survival action and a wrongful death action is important.  
3 In a survival action, the estate of a deceased person is allowed to prosecute a claim for  
4 personal injury that the deceased himself would have had but for his death. In a wrongful  
5 death action, the victim's dependents are allowed to recover for the harms they personally  
6 suffered as a result of the death, independent of any action the decedent may have had for  
7 his own personal injuries.  
8

9           Claims under Nevada's survival of action statute are governed by NRS 41.100. This  
10 statute provides that no cause of action is lost by reason of the death of any person, and such  
11 causes of action may be maintained by the decedent's executor or administrator. Thus, any  
12 claims brought under NRS 41.100 can only be brought by the administrator and may not be  
13 brought by any heirs. The statute specifically provides that it does not apply to the cause of  
14 action of a decedent brought by the decedent's personal representative for the decedent's  
15 wrongful death. *See* NRS 41.100(3). Nevada's survival of action statute provides that a  
16 cause of action in favor of an injured party for personal injury will abate when such personal  
17 injury results in death. *Borrego v. Stauffer Chemical Co.*, 315 F.Supp. 980, 982 (D. Nev.  
18 1993).

19           Nevada's wrongful death statute provides an independent cause of action for the  
20 heirs and personal representatives of a decedent whose death is caused by the wrongful act  
21 or neglect of another. *See* NRS 41.085. Under this statute, both the decedent's heirs and  
22 representatives may maintain a cause of action. A decedent's heirs may seek damages for  
23 the wrong done to them through the decedent's death, in the form of grief or sorrow, loss of  
24 probable support, companionship, society, comfort and consortium, as well as damages for  
25 the pain, suffering or disfigurement of the decedent. *See* NRS 41.085(5). The administrator  
26 may seek any special damages, such as medical expenses, which the decedent incurred or  
27 sustained before his death; funeral expenses; and any penalties that the decedent would have

1 recovered if he had lived; but not damages for pain, suffering, or disfigurement of the  
 2 decedent. *Id.*

3 Properly pled, plaintiffs' claim for battery would be part of the wrongful death claim  
 4 because the supposed illegality was allegedly a contributing factor in the Decedent's death.  
 5 Plaintiffs' negligence-based claims, however, would survive as separate claims and are  
 6 properly asserted under Nevada's survival statute.

7           **2. Only the Decedent's Estate can pursue the survival action.**

8 Nevada law only allows a decedent's executor or administrator to assert claims that  
 9 survive the decedent's death. *See NRS 41.100(1).* According to the statute:

10           1. Except as otherwise provided in this section and NRS 179A.230, no cause  
               11 of action is lost by reason of death of any person, but may be maintained  
               by...the person's executor or administrator.

12 NRS 41.100(1). NRS 41.100 makes no mention of a similar right extending to family  
 13 members or heirs to bring a survival action independent or in lieu of the estate's claim. *See*  
 14 generally NRS 41.100.

15 Here, the Siblings (and Nieces in their individual capacities) are not the Decedent's  
 16 Estate's administrators. ECF No. 1. The Complaint identifies the Nieces as the Co-Special  
 17 Administrators. ECF No. 1 at ¶¶23-24. Therefore, according to Nevada law, only the  
 18 Nieces in their representative capacities possess the requisite standing to bring claims on  
 19 behalf of the Decedent. Thus, any survival action on behalf of the Siblings (and the Nieces  
 20 in their individual capacities) must be dismissed.

21           **3. Only the Estate and the Siblings can Pursue the Wrongful Death  
               Action.**

22 Plaintiffs also allege wrongful death against the Defendants. Wrongful death is the  
 23 cause of action created by statute, having no roots in the common law. *Alsenz v. Clark  
               County School Dist.*, 109 Nev. 1062, 1064, 864 P.2d 285, 286 (1993). In Nevada, wrongful  
 24 death causes of action are governed by NRS 41.085, which states in relevant part:  
 25

1           2. When the death of any person, whether or not a minor, is caused by the  
 2           wrongful act or neglect of another, the heirs of the decedent and the personal  
 3           representatives of the decedent may each maintain an action for damages  
 4           against the person who caused the death...

5           An heir is “a person who, under the laws of the State, would be entitled to succeed to the  
 6           separate property of the decedent if the decedent had died intestate.” NRS 41.085(1).

7           For the purposes of NRS 41.085, an heir is determined by NRS 134 - Nevada’s  
 8           succession statutes. As recognized in the statute’s legislative history, “who the heir is, is  
 9           dependent upon the particular situation of the decedent.” S.B. 99, Committee on Judiciary,  
 10           1979 Leg., 60th Sess. (Nev. 1979). Specifically,

11           If there is no issue, surviving spouse or parent, then the estate goes in equal  
 12           shares to the brothers and sisters of the decedent and to the lawful issue of  
 13           any deceased brother or sister by right of representation . . .

14           See NRS 134.060. The Nieces would only succeed in the decedent’s separate property if the  
 15           decedent’s parents were also deceased, there was no spouse or children, and no siblings. See  
 16           NRS 134.070.

17           The Nieces never allege that they are a proper heir in the complaint. Any suggestion  
 18           of such would merely be a conclusory legal conclusion that the court may reject. Accepting  
 19           the factual allegations in paragraphs 24-29 as true, the Nieces cannot be legal heirs. See  
 20           NRS 134.050(3). Accordingly, the defendants respectfully request the Court dismiss the  
 21           Nieces, in their individual capacities, from all state law claims.

22           **C. PLAINTIFFS’ CLAIMS AGAINST SHERIFF LOMBARDO MUST BE  
 23           DISMISSED**

24           The Complaint states that the plaintiffs are suing Sheriff Lombardo only in his  
 25           official capacity. ECF No. 1 at caption and ¶11. The body of the Complaint does not allege  
 26           (or even imply) that Sheriff Lombardo had any personal involvement in the subject event.

27           Plaintiffs’ claims against Sheriff Lombardo in his official capacity as Sheriff must be  
 28           dismissed because a claim against the Sheriff in his official capacity is actually a suit against  
 29           the entity of which he is an agent. *See Kentucky v. Graham*, 473 U.S. 159 (1985). “As long

1 as the government entity receives notice and an opportunity to respond, an official-capacity  
 2 suit is, in all respects other than name, to be treated as a suit against the entity.” *Id.* at 166.  
 3 The real party in interest in such suits is the entity itself, and the entity, not the named  
 4 defendant, will be liable for any damages. *Id; see also, Correa v. Las Vegas Metro Police*  
 5 *Dep’t., 2016 WL 7320879, \*3 (D. Nev. Dec. 15, 2016) (citing Center for Bio-Ethical*  
 6 *Reform, Inc. v. Los Angeles Cty. Sheriff Dept., 533 F.3d 780, 799 (9th Cir. 2008)).*

7           **D. PLAINTIFFS’ STATE LAW NEGLIGENT RETENTION AND**  
 8           **TRAINING CLAIMS MUST BE DISMISSED**

9           Plaintiffs’ Ninth and Tenth Claims for Relief allege negligent retention and training  
 10 under Nevada state law. Defendants are immune from these claims pursuant to NRS 41.032.

11           Nevada has generally waived its sovereign immunity, *see* NRS 41.032, but it has  
 12 retained its immunity for state officials exercising discretion. *See id.; see also Carey v.*  
*Nevada Gaming Control Bd., 279 F.3d 873, 878 (9th Cir. 2002).* A person cannot maintain  
 13 an action against an officer or employee of Nevada “[b]ased upon the exercise or  
 14 performance or the failure to exercise or perform a discretionary function or duty on the part  
 15 of the State or any of its agencies . . . or of any officer . . . whether or not the discretion  
 16 involved is abused.” NRS 41.032(2) (emphasis added). Nevada’s discretionary-function  
 17 statute mirrors the Federal Tort Claims Act (“FTCA”), so Nevada law looks to federal  
 18 decisional law on the FTCA for guidance on what type of conduct is protected by  
 19 NRS 41.032. *Martinez v. Maruszczak*, 123 Nev. 433, 168 P.3d 720 (2007). In *Berkovitz–*  
*Gaubert* the United States Supreme Court proffered a two-part test to guide courts in  
 21 determining whether actors have discretionary immunity from FTCA claims, and in  
 22 *Martinez*, Nevada expressly adopted that test. *See id.* Under that test, an act is entitled to  
 23 discretionary immunity if: (1) the act involves elements of judgment or choice; and (2) the  
 24 act was based on considerations of public policy. *Id.* at 445, 168 P.3d at 728-29. Federal  
 25 courts applying the *Berkovitz-Gaubert* test assess cases on their merits, keeping in mind  
 26 Congress’ purpose in enacting the exception, which was to “prevent judicial second-  
 27

1 guessing of legislative and administrative decisions grounded in social, economic, and  
2 political policy through the medium of an action in tort.” *Id.* at 433, 168 P.3d at 729  
3 (internal quotation marks omitted).

4 Recently, the Nevada Supreme Court confirmed that LVMPD’s decisions with  
5 respect to hiring, retention, training, and supervision are discretionary and protected by  
6 Nevada’s discretionary-immunity statute. *Paulos v. FCH1*, 456 P.3d 589, 595 (Nev. 2020).  
7 *See also, Neal-Lomax v. Las Vegas Metro Police Dep’t.*, 574 F. Supp. 2d 1170, 1192 (D.  
8 Nev. 2008), aff’d, 371 F. App’x 752 (9th Cir. 2010) (“Because Nevada looks to federal case  
9 law to determine the scope of discretionary immunity, and because federal case law  
10 consistently holds training and supervision are acts entitled to such immunity, LVMPD is  
11 entitled to discretionary immunity on this claim.”); *Ramirez v. Clark Cty.*, No. 2:09-CV-98-  
12 JCM-RJJ, 2011 WL 3022406, at \*5 (D. Nev. July 22, 2011) (“[The] plaintiff is claiming  
13 negligent hiring, training, and supervision. As these functions are usually considered  
14 discretionary functions, and there is no reason to depart from such an interpretation in this  
15 case, the plaintiffs’ sixth claim for relief is barred by NRS 41.032.”); *Beckwith v. Pool*, No.  
16 2:13-CV-125-JCM-NJK, 2013 WL 3049070, at \*6 (D. Nev. June 17, 2013) (“[The plaintiff]  
17 has alleged that the [] defendants negligently hired, trained, and supervised certain police  
18 officers that allegedly caused her to remain in jail for up to twelve hours. However, the  
19 discretionary function exception bars these claims.”); *see also Kiro v. Las Vegas Metro*  
20 *Police Dep’t.*, 2:12-CV-00725-MMD-GWF, 2013 WL 236898, at \*2 (D. Nev. Jan. 22,  
21 2013); *Vasquez-Brenes v. Las Vegas Metro Police Dep’t.*, 2:12-CV-1635-JCM-VCF, 2014  
22 WL 447152, at \*10 (D. Nev. Sept. 10, 2014).

23 There is no reason to depart from the above-precedent as LVMPD exercises  
24 judgment in retaining and training its officers. That process involves “personal deliberation,  
25 decision, and judgment,” rather than “obedience to orders, or the performance of a duty in  
26 which the [defendant] is left no choice of his own.” *Sandoval v. Las Vegas Metro Police*  
27

1 *Dep't.*, 756 F.3d 1154, 1168 (9th Cir. 2014) (citing *Davis v. City of Las Vegas*, 478 F.3d  
 2 1048, 1059 (9th Cir. 2007) (internal quotations omitted)).

3 Unless Plaintiffs can distinguish the myriad cases in which the courts have time and  
 4 time again concluded that the police's internal decisions and training decisions are shielded  
 5 from liability, plaintiffs' claims must be dismissed pursuant to NRS 41.032.

6 **V. CONCLUSION**

7 Based upon the above, the LVMPD Defendants request this court issue the following  
 8 order:

9 1. Dismiss the Nieces in their individual capacity from the lawsuit for lack of  
 10 standing.

11 2. Dismiss the Siblings and Nieces from all federal law causes of action (i.e.,  
 12 Fifth Cause of Action, Sixth Cause of Action, Seventh Cause of Action, and Eighth Cause of  
 13 Action) for lack of standing.

14 3. Dismiss the Siblings and Nieces from the Complaint's state law survival  
 15 action claims for lack of standing.

16 4. Dismiss Sheriff Lombardo in both his official and individual capacities from  
 17 the lawsuit.

18 5. Dismiss the Complaint's state law negligent retention and negligent training  
 19 claims (Ninth Cause of Action and Tenth Cause of Action) due to the fact that defendants  
 20 are immune from the claims pursuant to NRS 41.032.

21 As a result of the above requests, the following causes of action and parties remain in  
 22 the litigation:

23 1. Wrongful Death-Battery (First Cause of Action) – Decedent's Estate and the  
 24 Siblings v. Defendants Campbell, Vasquez, and Roman.

25 2. Wrongful Death-Negligence (Second Cause of Action) – Decedent's Estate  
 26 and the Siblings v. Defendants LVMPD, Campbell, Vasquez, Gonzalez, and Roman.

3. Survival Action—Negligence (Third Cause of Action) – Decedent’s Estate v. Defendants LVMPD, Campbell, Vasquez, Gonzalez, and Roman.

3       4.     Survival Action—Battery (Fourth Cause of Action) – dismissed as this claim  
4 is part of the wrongful death claim.

5. 42 U.S.C. § 1983—Excessive force in Violation of the Fourth Amendment  
6 (Fifth Cause of Action) – Decedent’s Estate v. Defendants Campbell, Vasquez, and Roman.

6. 42 U.S.C. § 1983—Disregard of Medical Needs in violation of the Fourth  
Amendment (Sixth Cause of Action) – Decedent’s Estate v. Defendants Campbell, Vasquez,  
Gonzalez and Roman.

10       7.     42 U.S.C. § 1983—Municipal Liability Under *Monell* (Seventh Cause of  
11     Action) – Decedent’s Estate v. LVMPD.

12        8.      42 U.S.C. § 1983—Ratification (Eighth Cause of Action) – Decedent’s Estate  
13 v. LVMPD.

9. Negligent Retention (Ninth Cause of Action) – Dismissed pursuant to NRS 41.032

10. Negligent Training (Tenth Cause of Action) – Dismissed pursuant to NRS 41.032

Dated this 15<sup>th</sup> day of September, 2021.

## MARQUIS AURBACH COFFING

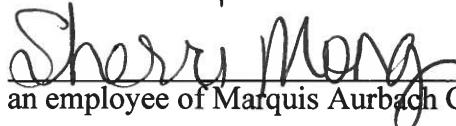
By   
Craig R. Anderson, Esq.  
Nevada Bar No. 6882  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Attorneys for Defendants LVMPD,  
Campbell, Vasquez, Gonzalez, Roman and  
Lombardo

1                    **CERTIFICATE OF SERVICE**

2                    I hereby certify that I electronically filed the foregoing **DEFENDANTS LVMPD,**  
3 **CAMPBELL, VASQUEZ, GONZALEZ, ROMAN AND LOMBARDO'S MOTION**  
4 **FOR PARTIAL DISMISSAL** with the Clerk of the Court for the United States District  
5 Court by using the court's CM/ECF system on the 15<sup>th</sup> day of September, 2021.

6                     I further certify that all participants in the case are registered CM/ECF users  
7 and that service will be accomplished by the CM/ECF system.

8                     I further certify that some of the participants in the case are not registered  
9 CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid,  
10 or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days  
11 to the following non-CM/ECF participants: n/a

12                      
13                    an employee of Marquis Aurbach Coffing

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